

Title 18. State Board of Equalization

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposed regulatory changes to Sales and Use Tax Regulation 1668 Sales *for Resale*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday May 27, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by Wednesday, May 27, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Regulation 1668, *Resale Certificates*, implements Revenue and Taxation Code sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in 1668(b)(1). When the seller takes a timely resale certificate in good faith from a person who holds a valid California seller's permit, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board looks to the purchaser for payment of any tax due. If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the tax must be reported and paid by the purchaser. Subdivision (b)(4) of Regulation 1668, which explains the use of a qualified resale certificate, provides that if a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a resale certificate that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or subject to tax. If each purchase order does not so specify, or is not issued timely, it will be assumed that the property covered by that purchase order was not purchased for resale, and the sale or purchase is subject to tax. If the purchase order is issued for property some of which is to be resold and some to be used, the purchase order must specify which items are purchased for resale and which items are not purchased for resale. In order to support a sale for resale, a seller must retain the purchase order in conjunction with the original qualified resale certificate.

The proposed regulatory changes amend subdivision (b)(4) of Regulation 1668 to provide that the acceptable resale designation on a purchase order is not limited to the phrase "for resale" and may include comparable terminology, such as "resale = yes," "nontaxable," "taxable = no," or similar terminology on a purchase order, indicating that tax or tax reimbursement should not be added to the sales invoice and will be regarded as designating that the property described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1). The proposed regulatory changes also provide that a purchase order where the applicable amount of tax is shown as \$0 or is left blank will not be accepted as designating that the property is purchased for

resale, unless the purchase order also includes the phrase “for resale” or other terminology described above to specify that the property is purchased for resale.

The proposed revisions will prevent confusion by allowing the seller to accept a purchase order combined with a qualified resale certificate without limiting the designation on the purchase order to the phrase “for resale”. Incorporating this policy in the regulation will help to avoid disputes between the purchaser and the seller. This will limit the purchaser’s ability to claim, later, that the purchase was not intended as a purchase for resale when the purchaser issues a qualified resale certificate and a purchase order that indicates the purchase of that item is not subject to tax. Thereafter, the purchaser will become liable for the tax should the property be used in a taxable manner.

Board staff met with interested parties on November 25, 2008, to discuss the proposed revisions to the regulation and, incorporated revisions suggested by the interested parties into the proposed regulations. On February 3, 2009, the Business Taxes Committee of the State Board of Equalization voted to approve and authorize for publication the proposed regulatory amendments.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1668 Sales *for Resale*, has no comparable federal regulations.

AUTHORITY

Sections 6596 and 7051 Revenue and Taxation Code.

REFERENCE

Sections 6091 and 6241 Revenue and Taxation Code

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984 , e-mail Richard.Bennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.